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1 B. Black
2 15th email.
3 **Q. Okay. So it's actually not from**
4 **Jamie Kiggen.**
5 A. No, but it presents Jamie Kiggen's
6 views.
7 **Q. According to Catherine Watters.**
8 A. According to Catherine Watters.
9 **Q. Okay. You attach no significance to**
10 **that?**
11 MR. FOX: Objection.
12 A. I have no reason to think that
13 Catherine wasn't accurately reporting Jamie's
14 desire to talk about reducing his numbers.
15 **Q. Okay. So let's go through it, parse**
16 **through this email.**
17 **It says, "MER cut its AOL revenue..."**
18 **Do you know what "MER" refers to?**
19 A. No actually.
20 **Q. Is it possible it refers to Merrill**
21 **Lynch?**
22 A. Yes.
23 **Q. "MER cut its AOL revenue from 40.7 to**
24 **\$40.1 billion..."**
25 **Is that a \$600 million reduction?**

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2 **for the next quarter?**
3 A. That feels like a confused question,
4 so I want to ask you maybe to restate it. I'm
5 not sure I understand the question.
6 **Q. Okay. All it says is he wants to**
7 **talk "...about reducing our numbers."**
8 A. Yes.
9 **Q. It doesn't say that he wants to -- I**
10 **mean, you don't view that as he wants to talk**
11 **about whether we should reduce our numbers, you**
12 **think it means that he wants to talk about the**
13 **need for us to reduce our numbers? Is that how**
14 **you -- that's how you read it?**
15 A. In context I consider this to be most
16 likely a statement that he believes that they
17 should reduce their numbers given what he then
18 thinks about AOL's performance.
19 **Q. Where does that come from?**
20 A. It comes partly from he's sending
21 this to Laura Martin and he already knows that
22 Laura Martin wants to bring the numbers down,
23 she has since January.
24 And it's also part of what -- there's
25 this email thread, but then there are a bunch of

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2 A. Yes.
3 **Q. It says, "We don't know if they cut**
4 **EBITDA."**
5 **And then it says, "JK is in Europe**
6 **but wants to talk next week about reducing our**
7 **numbers at some point before they report T1."**
8 **Right?**
9 **And I'm sorry, you interpret this to**
10 **mean that Jamie Kiggen did not believe Credit**
11 **Suisse's numbers for AOL at this time period?**
12 MR. FOX: Objection.
13 A. Let me return to the phrasing of the
14 expert report which is, "I was instructed to
15 make the following factual assumptions and they
16 are consistent with the factual record available
17 to me."
18 So the March 15th email is consistent
19 with the assumption that Jamie Kiggen as of this
20 date did not believe that AOL would meet its
21 guidance or CSFB's public estimates.
22 **Q. Okay. What about him wanting to talk**
23 **about reducing numbers to you suggests that he**
24 **thought it was necessary to reduce those numbers**
25 **in order to meet AOL's likely reported numbers**

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2 others around this same time period.
3 Certainly the way that if you look at
4 Laura Martin's response, certainly the way that
5 she interprets what he's saying.
6 **Q. The way she's interprets what he's**
7 **saying is what?**
8 MR. FOX: Objection.
9 A. So the first two sentences of her
10 reply on March 29th, though again, I seem to
11 recall there's some other stuff in between, you
12 know, other emails, says, "This may be one that
13 you and I disagree on. I would not lower
14 numbers on AOL even though they can't make
15 them."
16 I take that to be her reading his
17 message, plus whatever happened between the 15th
18 and the 29th, as suggesting that he believes
19 that the numbers should be lower.
20 And --
21 **Q. Okay. So you think --**
22 A. -- that's part of the context here.
23 **Q. Okay. And but what -- do you look at**
24 **what he said about this at his deposition?**
25 A. I read his deposition but I don't

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2 recall his specific statements.
3 **Q. But there's no point in us looking at**
4 **it, because whatever it says, you're going to**
5 **say that he's biased and that he's just**
6 **providing color after the fact in the same way**
7 **you discounted Laura Martin's views about what**
8 **she's saying; is that right?**
9 MR. FOX: Objection.
10 A. I'm happy not to look at it. If
11 that's your -- it's your -- you're asking the
12 questions. You can ask me to look at it, you
13 can as ask me not to look at it.
14 **Q. I'm just saying without looking at**
15 **it, I'm asking you are you going to make the**
16 **same argument about what I show you that you**
17 **made about Laura Martin; that eight years after**
18 **the fact or five years after the fact people**
19 **have a tendency when they're defendants and**
20 **whatever nonsense you were talking about before**
21 **about why Laura Martin's views are biased, are**
22 **you going to make that same argument about Jamie**
23 **Kiggen's views about his emails such that**
24 **there's no point in me showing it to you?**
25 MR. FOX: Objection.

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2 **that what you said about Laura Martin's views**
3 **about the January 11th email?**
4 A. No. I think that my view is informed
5 by what she said at her deposition, which is not
6 the same thing as saying I give dispositive
7 weight to what she said at her deposition when
8 other interpretations are possible.
9 But again, this is an assumption that
10 I was asked to make and all I'm saying in my
11 report the factual record is consistent with
12 that assumption.
13 It's possible for the trier of fact
14 to read the factual record in a manner that's
15 consistent with this assumption.
16 **Q. That sounds like a legal**
17 **interpretation.**
18 **I mean are you now opining on whether**
19 **the summary judgment standard has been met with**
20 **respect to this issue?**
21 A. I was not trying to express a legal
22 opinion.
23 **Q. No.**
24 A. I was just trying to say what I
25 thought it meant to me to say that these

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2 A. That feels like a compound question.
3 So it is my view that it might well
4 be that one should place greater weight on
5 interpreting a document written in 2001 the way
6 an outsider would read it.
7 To the extent that interpretation is
8 intentioned with a later statement of a
9 deposition about what that might mean, I don't
10 take that to be a statement about any person in
11 particular, I take that to be a statement, a
12 general statement.
13 And I think I would hold that general
14 view that I think there's value reading
15 documents on their own.
16 That isn't to say that there is no
17 value in seeing what people would then say about
18 them when asked.
19 **Q. But I mean let's be honest, you think**
20 **that your reading of Jamie Kiggen and Laura**
21 **Martin's emails at the time and what they meant**
22 **is actually better than their own deposition**
23 **testimony about their emails because they suffer**
24 **from some bias that you don't suffer from?**
25 **Isn't that exactly what -- in substance, isn't**

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2 assumptions are consistent with the factual
3 record available to me.
4 **Q. Okay. Your testimony has been**
5 **rejected in the past on the basis -- your expert**
6 **testimony has been rejected in the past on the**
7 **basis that a judge in at least one opinion**
8 **thought that you were providing what was**
9 **essentially legal testimony; is that right?**
10 A. I think I know what you're referring
11 to, but I think if you phrase that generally, I
12 wouldn't say that was entirely right.
13 **Q. What do you think I'm referring to?**
14 A. You're probably referring to a
15 statement in a case involving ONBANCORP in the
16 mid-1990s where I submitted an expert report
17 that I think was mostly in the nature of factual
18 material and had a bit of what I would consider
19 a legal analysis at the end, and the judge
20 didn't like the legal analysis.
21 **Q. Okay.**
22 A. But I don't think it was a fair
23 description of my report as a whole.
24 **Q. That's not what I'm talking about,**
25 **but in that case Judge Pooler did indicate that**

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she was inclined to grant the motion to strike your testimony because it consisted largely of legal argument; is that correct?

A. She said something like if a motion had been made, I might have been inclined to grant it, but it wasn't made and probably it wasn't made because except for this one section of my report, it wouldn't have been appropriate to make it.

Q. In fact it was made and withdrawn actually.

A. That I have no knowledge about.

Q. Actually I was talking about the Alumex, Inc. versus IRS case.

A. Alumex?

Q. Alumex, yeah.

A. I don't recall my opinion in Alumex as having been rejected as legal in nature.

Q. Okay. I'm not going to waste time on it.

A. But in any event, I was not trying to provide a legal statement. I was just trying to provide -- you know, let me limit what it is I mean when I say, you know, that, you know, this

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Q. Do you believe there was testimony suggesting that it was an implicit part of his compensation?

MR. FOX: Objection.

A. There's certainly information in the record suggesting that he was sensitive to the possibility of investment banking business.

Q. Okay. Irrespective of his compensation or in light of his compensation?

A. I guess I want to say there is testimony that he was sensitive to that possibility, and I'm not aware of it being an explicit part of his compensation and, you know, what went into long run compensation decisions and what went into CSFB's decision to hire him at salary X instead of Y, I don't know.

Q. Okay. And -- all right. What were some other reasons why he would have a motivation to lie in his research reports?

A. I think that analysts are concerned about maintaining access to company executives and there's certainly the potential for access to be reduced or even withdrawn entirely if an analyst makes the company executives unhappy by

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is consistent with a factual record available to me and I don't mean to say this is the only possible interpretation of the factual record.

Q. Why would Kiggen issue reports on AOL that he didn't believe?

MR. FOX: Objection.

A. I can offer a number of reasons.

Q. Okay.

A. One reason would be a desire to preserve the potential for investment banking business for CSFB with AOL.

Q. Let's stop with that. We'll continue on. Let's take them one at time.

Do you know what CSFB's investment banking relationship was with AOL?

A. No.

Q. Do you know if Jamie Kiggen received compensation based on investment banking business generated by the investment banking division of CSFB?

MR. FOX: Objection.

A. I believe there was testimony in his deposition that that was not an explicit part of his compensation.

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writing something, so he might have been concerned with maintaining his access to the company executives, including Richard Hanlon and Robert Pittman.

Q. Okay. Anything else?

A. He may have been concerned with -- let's put it in general, analysts who work for investment banks are called sell side analysts and they're called that for a reason; that in some sense although their compensation doesn't directly come from trading commissions, it's certainly indirectly related to trading commissions, and on the whole you don't get people to trade by telling them they shouldn't buy. So there's probably some reason that is compensation related for analysts to be, sell side analysts to be systematically upward biased.

Q. Anything else?

A. Fourth, Jamie Kiggen had been a longtime bull on AOL and I believe into late 2000 had a price target on the order of 115 or 120 if I recall correctly, and so he had just brought it down from that very high level to 80

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1 B. Black
2 in December of 2000 or January 2001 I believe.

3 He might have felt that it would be
4 embarrassing and harmful to his reputation to
5 then bring it down further, and again, given
6 where it had been so recently and therefore
7 might have wanted to stretch out the period over
8 which he revised downward his views on AOL.

9 **Q. And more harmful to his reputation**
10 **than being wrong in your view.**

11 A. That's certainly, certainly possible
12 that he would have perceived more harm to his
13 reputation from two collectively large downward
14 revisions in short order than from stretching
15 out --

16 **Q. Even if that made him more accurate.**

17 MR. FOX: Objection.

18 A. Even if the hypothetical second
19 downward revision would have been closer to the
20 sum of his views on AOL and Laura Martin's views
21 on Time Warner. America Online and Laura
22 Martin's views on Time Warner.

23 **Q. Did you look at any of the research**
24 **analysts who covered AOL who did not have the**
25 **same motivations that Kiggen might have to**

1 B. Black
2 **determine whether his research reports and the**
3 **numbers that he put forward were consistent**
4 **with, were consistent with -- as between -- I'm**
5 **sorry. Strike that.**

6 **Did you look to see if whether any of**
7 **the analysts who were covering AOL who did not**
8 **have the motivations to lie that you indicate**
9 **that Mr. Kiggen had, had similar metrics for AOL**
10 **during the time period of 2001 and 2002?**

11 MR. FOX: Objection.

12 A. Let me respond by saying that with
13 regard to the first three causes of concern,
14 concern for investment banking business, concern
15 for access to company executives and concern
16 with generating trading revenue, that I would
17 consider those to probably apply across the
18 board to many analysts and not be specific to
19 Jamie Kiggen.

20 And I have not researched the extent
21 to which the fourth concern, which is my
22 estimate used to be even higher than it is
23 today, would apply to analysts other than Jamie
24 Kiggen.

25 **Q. Do you know what Bernstein Research**

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1 B. Black
2 is?

3 A. I've heard the name.

4 **Q. Do you know if they covered AOL**
5 **during the class period?**

6 A. I believe that they did.

7 **Q. Do you know if they have investment**
8 **banking business?**

9 A. I've not heard of them as an
10 investment banking firm.

11 **Q. That's because they don't do**
12 **investment banking business.**

13 **So the bias that you indicated with**
14 **respect to generating investment banking**
15 **business, that wouldn't apply to Bernstein; is**
16 **that right?**

17 A. If they don't have investment banking
18 business, then it wouldn't apply.

19 **Q. Okay. So do you think it would be a**
20 **useful metric to determine whether or not**
21 **Mr. Kiggen's reports were reasonable to take a**
22 **look at someone like Bernstein who didn't have**
23 **investment banking business to see what their**
24 **numbers were to see if they were comparable?**

25 MR. FOX: Objection.

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2 A. It might be relevant.

3 **Q. But you didn't do that.**

4 A. I did not systematically look at
5 other analysts as part of this assignment.

6 **Q. You indicate that, in your report,**
7 **that Kiggen didn't believe that AOL would meet**
8 **its numbers because of the March 15th email.**

9 **Do you know when the next report that**
10 **was issued by Credit Suisse that had actual**
11 **numbers in it was?**

12 **In terms of numbers, I'm talking**
13 **about revenue and EBITDA numbers.**

14 MR. FOX: Objection.

15 A. I'm aware that there was a major
16 report issued on April 10th, but I'm not aware
17 of whether there were smaller reports between
18 March 15th and April 10th.

19 **Q. So let's take a look at that report.**

20 MR. GESSER: This is Black-15.

21 (Defendants' Exhibit Black 15, Credit
22 Suisse First Boston report dated 4/10/01,
23 marked for identification, as of this
24 date.)

25 BY MR. GESSER:

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1 B. Black
2 **Q. So turning to page 29 --**
3 MR. FOX: I would just say this is a
4 long report and do you want to give the
5 witness time to look at it?
6 MR. GESSER: I would hope the witness
7 has looked at it. It's all over his
8 report.
9 MR. FOX: Well, I understand, but it
10 might be a while since he's looked at it.
11 MR. GESSER: Okay. Well, your -- I'm
12 going to --
13 MR. FOX: Whatever you want.
14 A. I've turned to page 29.
15 **Q. Okay. What's the net revenue number**
16 **that's there?**
17 A. The net revenue after intersegment
18 elimination for the full year 2001 is 41,184 in
19 millions of dollars.
20 **Q. So does that mean that Kiggen**
21 **actually reduced the net revenue number?**
22 MR. FOX: Objection.
23 A. My recollection is that the -- that
24 there was an earlier CSFB number of \$41.6
25 billion. I'm not pinning that down to a

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1 B. Black
2 **Q. Okay. So he was below guidance.**
3 A. He was below guidance, but explicitly
4 ruling out the EBITDA or revenue impact of a AOL
5 subscription price rise.
6 **Q. Where does that come from?**
7 A. In some of his reports, and I forget
8 which ones, he explicitly says, "We're not
9 building this into our analysis" and in fact
10 that's a lever that AOL has to try to meet
11 guidance if they need it, where I think there's
12 lots of indication that a subscription price
13 rise was expected and indeed occurred relatively
14 soon thereafter.
15 **Q. Okay. To the extent that you say**
16 **that in your assumption at three that he said**
17 **that AOL couldn't meet its EBITDA guidance, he's**
18 **got an actually a lower EBITDA number than AOL,**
19 **correct?**
20 A. I read this report as projecting that
21 without a subscription price rise, AOL would not
22 quite meet its EBITDA number, but in some sense
23 holding that in reserve in the same way that the
24 company is holding that in reserve.
25 **Q. And he does actually lower the**

1 B. Black
2 specific date.
3 **Q. Okay. Right. That's a \$400 million**
4 **reduction in the revenue numbers?**
5 A. If my recollection is correct, then
6 that would be a \$400 million reduction in
7 projected revenue.
8 **Q. So Kiggen actually does bring down**
9 **the revenue number, right, as he said he would**
10 **in the email; is that right?**
11 MR. FOX: Objection.
12 BY MR. GESSER:
13 **Q. In the March 15th email?**
14 A. Assuming that the most recent prior
15 revenue number was \$41.6 billion, 41.2 was lower
16 than 41.6.
17 **Q. Okay. So --**
18 A. It appears that the -- that there was
19 not a change in the EBITDA number because I'm
20 seeing approximately \$10.9 billion here and my
21 recollection is that there were similar prior
22 numbers.
23 **Q. Do you know what AOL's guidance was**
24 **at this time?**
25 A. AOL's guidance was \$11 billion.

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1 B. Black
2 **revenue number; is that right?**
3 MR. FOX: Asked and answered.
4 A. Again, not having in front of me the
5 immediate prior reports, I have a recollection
6 of \$41.6 billion at some prior date.
7 **Q. Okay. So now what is it about the**
8 **email that is now inconsistent -- the March 15th**
9 **email is now inconsistent with his report?**
10 MR. FOX: Objection.
11 A. First, I don't want to look just at
12 the March 15th email. I also want to look at
13 the back and forth between the 15th and the
14 29th. I want to look at whatever happened that
15 isn't recorded in emails that may have informed
16 Laura Martin's response, because she's clearly
17 talking about whether they should lower the
18 EBITDA estimate and that makes me think that
19 that was part of what Jamie Kiggen was
20 interested in doing, even though the March 15th
21 email is not explicit about that.
22 **Q. On the top of page 11 you say that**
23 **he -- that "Kiggen increased estimated..." this**
24 **is on page 11, I'm sorry, of your report, that,**
25 **"Kiggen increased estimated Time Warner revenue**

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1 **B. Black**
2 **by \$800 million so that overall AOL Time Warner**
3 **revenue dropped by \$400 million"; is that**
4 **correct?**
5 A. Which page of my report?
6 **Q. Top of 11.**
7 **(Document review.)**
8 A. Yes.
9 **Q. And you say, "It's hard to see how**
10 **this change in Time Warner revenue was either**
11 **honest or reasonable. Laura Martin was the Time**
12 **Warner expert. She was trying to bring the Time**
13 **Warner numbers down, not up."**
14 **Is that right?**
15 A. Yes.
16 **Q. Did you actually bother to check**
17 **whether or not with the \$800 million increase in**
18 **Time Warner revenue, whether that was consistent**
19 **with what the actual numbers that Time Warner**
20 **reported?**
21 MR. FOX: Objection.
22 (Document review.)
23 A. I believe that I did.
24 **Q. Okay. So do you remember what the**
25 **result was?**

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1 **B. Black**
2 **show you those numbers, but I want to move on to**
3 **another topic.**
4 **You indicate in your report that --**
5 **let's look at page 15. That "On July 10th, a**
6 **credible source in AOL's business affairs unit**
7 **generated -- which generated the lion's share of**
8 **AOL's crucial ad com revenue advised CSFB of**
9 **medium severity layoffs in that unit which would**
10 **not be publicly announced."**
11 **Do you see that?**
12 A. Yes.
13 **Q. What's your basis for saying that**
14 **source was credible?**
15 A. I have no reason to think otherwise.
16 **Q. Okay. But did someone tell you it**
17 **was a credible source?**
18 A. I think I recall some back and --
19 some email, some emails in which sort of that
20 question was asked of this person at CSFB who
21 received the information of is your resource
22 credible and he answered yes.
23 **Q. Do you know who the source was?**
24 A. No.
25 **Q. Do you know that she was deposed in**

1 **B. Black**
2 A. For Time Warner only, no, I don't.
3 **Q. Okay. Would it surprise you to learn**
4 **that even with the increase by \$800 million,**
5 **that Time Warner beat the number that Kiggen had**
6 **assigned to his Time Warner numbers for the**
7 **first quarter of 2001?**
8 A. So the question is, what were the
9 Time -- what was the Time Warner estimated
10 revenue for the first quarter of 2001, right and
11 what was their actual revenue.
12 And gee, let's look at the numbers.
13 **Q. I'm asking you -- we don't have time**
14 **because I've got other things, but I'm asking**
15 **you, would it surprise you to learn that CSFB's**
16 **numbers, even with the \$800 million that you're**
17 **talking about, actually fell short of the actual**
18 **numbers that Time Warner reported for first**
19 **quarter of 2001?**
20 So he was -- it was neither -- it was
21 not reasonable, but it was actually reasonably
22 too low. He should have increased it more.
23 That would surprise you?
24 A. That is not my recollection.
25 **Q. Okay. If we have time, I'm going to**

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1 **B. Black**
2 **this case?**
3 A. Yes.
4 **Q. Did you read her deposition**
5 **transcript?**
6 A. No.
7 **Q. Do you know how old she was at the**
8 **time?**
9 A. No.
10 **Q. Do you know what level employee she**
11 **was at the time?**
12 A. No.
13 **Q. Do you know what she said about**
14 **whether she would have access to non-public**
15 **information?**
16 A. I have --
17 MR. FOX: Objection.
18 A. Well, if she said there were going to
19 be medium severity layoffs which would not be
20 publicly disclosed, that certainly suggests that
21 she has access to non-public information.
22 **Q. Is that my question?**
23 We have very limited time, so why
24 don't you just answer my question?
25 **Do you know what she said at her**

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1 **B. Black**
2 **deposition about --**
3 A. I've already said I didn't read her
4 deposition.
5 **Q. But that's not what I'm asking.**
6 **I'm saying did someone tell you what**
7 **she said in her deposition about this.**
8 A. I have no knowledge about what she
9 said in her deposition at that level of
10 specificity.
11 **Q. Fine.**
12 **So analysts hear rumors all the time,**
13 **correct?**
14 MR. FOX: Objection.
15 A. I would expect that analysts are
16 likely to hear rumors with some frequency.
17 **Q. And they don't publish all the rumors**
18 **that they hear; is that right?**
19 A. I would agree with that.
20 **Q. In fact it would be improper for them**
21 **to report many of the rumors that they hear.**
22 MR. FOX: Objection.
23 A. Depending on the rumor, it might be
24 improper to report the rumor. It would depend
25 on the nature of the rumor.

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1 B. Black
2 unless you give me another half an hour.
3 MR. FOX: I'm not agreeing to that.
4 MR. GESSER: Okay. Then all right --
5 MR. FOX: You can make whatever
6 motion you want.
7 MR. GESSER: Fine. Then I'm going to
8 ask you to just not make any more
9 objections other than just objection for
10 the next 15, 20 minutes.
11 MR. FOX: Okay. Fine.
12 BY MR. GESSER:
13 **Q. All right. I'm sorry, go ahead, you**
14 **can continue answering the question.**
15 A. Assuming that he treats this, you
16 know, the rumor as credible and worthy of
17 investigation, the natural place to go would be
18 to AOL to see whether they're willing to confirm
19 or deny this information.
20 **Q. Okay. You're an analyst, you receive**
21 **this email that's in front of you that's marked**
22 **Black-16, what do you think that analyst should**
23 **do with that information?**
24 MR. FOX: Objection.
25 A. That as part of the overall back and

1 B. Black
2 **Q. Okay. And so in this case, what do**
3 **you think Mr. Kiggen should have done with the**
4 **rumor that he heard?**
5 MR. FOX: Objection.
6 A. What...
7 MR. GESSER: I'm marking as Black --
8 (Defendants' Exhibit Black 16, Email
9 dated 1/11/01 from Lorenzo to Kiggen,
10 Watters, marked for identification, as of
11 this date.)
12 A. Assuming that this is coming from a
13 credible source and that it is potentially
14 important information, the natural thing for
15 him --
16 **Q. I'm sorry. I'm going to stop you**
17 **there.**
18 MR. GESSER: Are you going to insist
19 on the seven hours?
20 MR. FOX: Yes.
21 MR. GESSER: Are you going to stop
22 this at seven hours?
23 MR. FOX: Yes.
24 MR. GESSER: Okay. I'm going to move
25 to extend the time and ask him to come back

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1 B. Black
2 forth, I think it would be appropriate to see if
3 the company's investor relation person,
4 Mr. Hanlon, would be willing to either confirm
5 or deny the existence of layoffs.
6 **Q. Assuming he would not.**
7 A. Well, he could do three things; he
8 could say yes, he could say no, or he could say
9 we don't disclose that information.
10 I don't know whether that inquiry was
11 made and I don't know what the response was, so
12 it's going to become a complicated hypothetical
13 very quickly.
14 **Q. But not knowing that, how are you**
15 **able to opine on whether there was information**
16 **that was withheld from the market based on this**
17 **email?**
18 MR. FOX: Objection.
19 A. I don't know that I offered that
20 opinion.
21 I offered an opinion that substantial
22 layoffs would be highly value relevant.
23 **Q. So you have no opinion as to whether**
24 **Kiggen should have disclosed this or not in his**
25 **report?**

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A. I think my sense would be that information about medium severity layoffs in a core business unit that's at the core of the value of AOL and the growth of AOL probably should prompt an inquiry at the company.

And I recall from his deposition that there was some back and forth on whether that inquiry had occurred; that he wasn't, if you will, disagreeing that he ought to inquire further and his view, without having specific recollection, is oh, we must have and there must have been nothing to it or something along those lines. That's not a precise recollection.

So I think his view was that yes, it was appropriate to investigate further and they must have done so and not found any substance to it, and therefore said nothing.

That may not be a fair paraphrase of his deposition testimony, but that's what I recall.

Q. Do you even know what my question was?

A. I've now forgotten it.

Q. My question was would you have

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telling you."

A. That's a tough one. You've got potentially I think highly value relevant information that is not yet fully confirmed but it's also not denied either, and the appropriate course might be to see if you could confirm it in some other way.

Q. Assume you couldn't.

A. I have not formed an opinion and I'm sort of reluctant to do so on the fly.

Q. What do you think about this email suggests -- let's take the layoffs, for example, let's take the layoffs and separate them from the accounting investigation.

What about this email makes you think that this is highly relevant information to the market?

A. If AOL is saying publicly we don't see the effect of the online advertising slowdown on us, we're doing just fine, we're growing rapidly, and at the same time they're laying off people in their advertising division, those are inconsistent.

Q. How many employees does AOL have at

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disclosed this as an analyst?

A. I'd want more information. So you don't say hey, we have a source within AOL that says X, you go ask the company, you see if you can verify.

Q. And you just said that Kiggen thinks that that must have happened and that they didn't learn anything more than this.

MR. FOX: Objection.

Q. Assuming that to be true, assuming that Kiggen did some kind of analysis and couldn't learn anything more than this.

MR. FOX: Objection.

A. So again, let me try to pin down the hypothetical. So Kiggen talks to him and says, you know, we've been told that there are significant or medium severity or something layoffs in business affairs and, you know, I'm worried about what that implies for ad com revenues because these are people who are generating the ads and Hanlon says, "False."

Q. No. That's not what I'm saying.

Hanlon says, "Greg FD says that I can't provide non-public information to analysts so I'm not

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this time?

A. 15,000 at a rough estimate, but I don't -- don't hold me to that.

Q. Okay. How about 90,000 for the Time Warner, AOL combined Time Warner?

A. Oh, I'm sorry. I was thinking America Online. I think America Online would have been about 15,000.

I don't even have a view on what Time Warner's overall would have been.

We're getting tangled up in the terminology again.

Q. That's why I said...

And a layoff that's medium in terms of severity, what do you take that to mean?

A. So out of a denominator of 15,000, certainly well into the hundreds, 500. More than 500, not 5,000.

Q. And why are you using the denominator of 15,000 instead of 90,000?

A. Because I take this information to be information about the America Online unit and not about AOL TW as a whole.

Q. Why do you do that?

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A. That's my recollection of the facts of the case. I believe the source was someone in the business affairs unit and that's my -- there are other emails related to that but, you know, it's a view on the facts, but that is my view of the facts and it's not just coming just from this email.

Q. And medium, is that a term of art, medium layoffs or you're just ascribing some number to that?

A. I'm ascribing some general value of look, it's not, you know, it's not huge, right? But it's significant I suppose in some way.

I can't go behind the words "medium severity." So you asked me in some sense to speculate about out of 15,000 people, how many would be medium severity and my speculation was, you know, well into the hundreds.

Q. Who's the author of this email?

A. Anthony Lorenzo.

Q. Do you know if Anthony Lorenzo was deposed in this case?

A. I understand that he was.

Q. Do you know if Anthony Lorenzo gave a

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A. Yes, I have.

Q. It's a Washington Post article from July 11, 2001?

A. Yes.

Q. If you take a look at the email, if you take a look at the email, that's July 11; is that right, from Anthony Lorenzo?

A. The email from Anthony Lorenzo is July 11th.

Q. And the article is from July 11th as well; is that right?

A. That's correct.

Q. And the article talks about layoffs that occurred yesterday, so that would have been on July 10th; is that right?

A. That's correct.

Q. It says, "In -- AOL Time Warner yesterday laid off 30 people in its online marketing division," okay?

A. Yes.

Q. And then it says in the next paragraph, "These are employees who worked in the business development group in the interactive marketing division of America

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view as to what he meant when he wrote "medium severity"?

A. I am not familiar with the contents of his deposition.

My recollection is that he didn't have any more information other than the term "medium severity."

Q. How do you recall that if you didn't review his deposition transcript?

A. From conversations with counsel.

MR. FOX: I would just caution the witness not to get into conversations with counsel.

THE WITNESS: Okay.

BY MR. GESSER:

Q. You said that one thing you'd want to do is try to verify this through other sources, through AOL and so forth; is that correct?

A. Yes.

Q. Just to save time, I'm going to show you something that's been previously marked as Lorenzo 6 so we don't have to waste the time re-exhibiting it.

Have you seen this before?

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Online."

A. Yes.

Q. Okay. If you were Jamie Kiggen and had seen this article on the same day that you had received this email, any reason to think that these layoffs are not the layoffs referred to in the email?

A. I think that the view that these were the same layoffs and the view that these were not the same layoffs are both consistent with the factual evidence available to me.

Q. What was my question?

A. You asked me whether Kiggen should have assumed that these were the same layoffs.

Q. Was it reasonable for Kiggen to assume they were the same layoffs?

MR. FOX: Objection.

A. Again, I think the natural and appropriate thing for him to do, and I think the thing he says he assumed he did, was to check with the company.

And then I'd want to know, okay, what did the company say about that.

And one of the things the company

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1 B. Black
2 might have said is go read the Washington Post.

3 And if the company said something
4 other than that, that might be evidence
5 suggesting that this was something different
6 than what was reported in the Washington Post.

7 So without getting into fairly
8 complicated hypotheticals.

9 **Q. Let's say assume he did not talk to**
10 **the company at all, but instead saw this and**
11 **then looked at the Washington Post and said**
12 **okay, well, layoffs, layoffs same day, same**
13 **division, same everything, that must be it. And**
14 **this is not being announced by the company, this**
15 **is somehow being leaked. I think that this must**
16 **be the same layoffs. No need for me to report**
17 **on it, it's already public.**

18 MR. FOX: Objection.

19 BY MR. GESSER:

20 **Q. Reasonable?**

21 MR. FOX: Objection.

22 A. I guess I certainly didn't -- I
23 wasn't trying to form an opinion on the
24 reasonableness of this particular hypothetical
25 course of conduct and I find myself reluctant to

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1 B. Black
2 layoffs or that the layoffs that were announced
3 in the Washington Post were layoffs that she
4 would have considered to be of medium severity.

5 **Q. You said that you thought that both**
6 **hypotheticals or both possible factual**
7 **situations were plausible, I believe, or I don't**
8 **know if you said equally plausible, but both**
9 **plausible; one, that the layoffs that occurred**
10 **on -- that were announced in the Washington Post**
11 **article are the layoffs that are being referred**
12 **to in the Lorenzo email from January 11, and**
13 **also that they were not; is that right?**

14 MR. FOX: Objection.

15 A. I think I said that it struck me that
16 those were both plausible assumptions or
17 reasonable assumptions or something like that.

18 **Q. And then I think just from your**
19 **report, I think you would say, if I'm correct,**
20 **that in the alternative possibility, the layoffs**
21 **that are being referred to in the July 11th**
22 **email are actually layoffs that occurred, were**
23 **announced publicly on July 13th; is that right?**

24 A. I'm sorry. Can you repeat the
25 question?

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1 B. Black
2 do so.

3 I'm certainly not saying no, my
4 opinion is that hypothetical course of conduct
5 would be unreasonable.

6 **Q. What leads you to even think that it**
7 **could be unreasonable?**

8 MR. FOX: Objection.

9 A. Thirty people doesn't sound like
10 medium severity to me, so at least it would
11 occur to me that these aren't the same thing.

12 And if he's in regular conversation
13 with Hanlon, which he probably is, it might well
14 have been appropriate for him to do what he says
15 in deposition he thinks he did, which is ask.

16 **Q. So it may be unreasonable because 30**
17 **layoffs doesn't sound like medium severity.**

18 **Is it possible that the source didn't**
19 **know the scope of the layoffs, all she knew was**
20 **that people in her division were laid off and**
21 **she described it as medium, but what her view is**
22 **medium and what your view is medium are quite**
23 **different?**

24 A. I would consider it to be possible
25 that either she didn't know the scope of the

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1 B. Black
2 **Q. If you look at page 16 of your**
3 **report.**

4 **(Document review.)**

5 A. Okay.

6 **Q. You say, "On August 13th, the Wall**
7 **Street Journal reported significant expected**
8 **layoffs at AOL consistent with the information**
9 **available to CSFB about layoffs at AOL's**
10 **business affairs unit."**

11 A. Yes.

12 **Q. If it's not explicitly said, the**
13 **strong suggestion is there that you're talking**
14 **about that the layoffs that are referred to in**
15 **the Lorenzo email from July 11th are the same**
16 **layoffs on August 13th.**

17 A. Well, I assume that in Footnote 2.

18 **Q. Okay. So I'm asking --**

19 A. By the time I get to page 16, I've
20 already assumed that.

21 **Q. Okay. But before you said not only**
22 **have you assumed it, but you view it to be a**
23 **plausible conclusion; is that right?**

24 A. Yes. I think I would not have been
25 comfortable assuming -- making the assumption in

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1 B. Black
 2 Footnote 2 if I didn't think it was a reasonable
 3 assumption.
 4 **Q. Okay. So those layoffs, the layoffs**
 5 **that are announced on August 13th, do you know**
 6 **if they were public at any time before August**
 7 **13th?**
 8 A. My understanding is that those
 9 layoffs were not publicly disclosed prior to The
 10 Wall Street Journal article on the 13th.
 11 **Q. So that would mean that the source at**
 12 **AOL, according to let's say the second factual**
 13 **scenario that you say is plausible, would have**
 14 **had non-public information about layoffs on July**
 15 **10th, 2001 that were not made public until**
 16 **August 13th, 2001, so roughly a month that the**
 17 **source would know about layoffs at AOL that had**
 18 **not been announced publicly; is that correct?**
 19 A. Well, they weren't announced publicly
 20 on August 13th either. The Wall Street Journal
 21 reported on them.
 22 **Q. Okay. But that were unknown to the**
 23 **market until August 13th.**
 24 MR. FOX: Objection.
 25 A. Yes, that would be consistent with

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1 B. Black
 2 A. Some layoffs at the combined company
 3 were expected post merger.
 4 **Q. And in fact one of the reasons for**
 5 **people being optimistic about the combined**
 6 **entity was the fact that there would be certain**
 7 **synergies between the companies that would lead**
 8 **to a reduction in workforce; is that correct?**
 9 A. Yes.
 10 **Q. Okay. So why did these layoffs that**
 11 **are announced -- why do these layoffs that are**
 12 **referred to in the July 11th email, why do you**
 13 **view them as being necessarily negative?**
 14 MR. FOX: Objection.
 15 A. They would be likely to be negative
 16 both because they were concentrated within AOL
 17 and because at least in July 11th they were
 18 concentrated in business affairs, which is where
 19 the ad commerce revenue is coming from.
 20 So I wouldn't be nearly as troubled
 21 by hey, we figured out to provide modems using
 22 fewer people and therefore we're going to cut
 23 our -- the number of people who provide modem
 24 service. I wouldn't doubt that they're still
 25 providing modems.

1 B. Black
 2 the assumption I'm making in Footnote 2.
 3 **Q. Do you know how many people were laid**
 4 **off on August -- were announced that were going**
 5 **to be laid off in the August 13th, August 14th**
 6 **Wall Street Journal and then subsequently I**
 7 **think it's the Washington Post articles?**
 8 A. About 1,000 people overall.
 9 **Q. And do you know where those people**
 10 **were to be laid off?**
 11 MR. FOX: Objection.
 12 A. I think, if I'm recalling The Wall
 13 Street Journal article correctly, I'm not
 14 recalling great specificity about which business
 15 units.
 16 **Q. Physically do you know where?**
 17 A. I'm recalling a reference to D.C.,
 18 but the article speaks for itself.
 19 **Q. Some in D.C., some in California.**
 20 **Does that sound familiar?**
 21 A. I recall D.C.
 22 I'm not recalling more detail than
 23 that.
 24 **Q. Were layoffs expected post merger?**
 25 MR. FOX: Objection.

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1 B. Black
 2 **Q. Where does it say in that email that**
 3 **the person is in the business affairs unit?**
 4 A. I believe that that's the case and
 5 I'm not -- is there a July 10th email?
 6 **Q. Yes. It's Lorenzo-3.**
 7 **(Document review.)**
 8 A. Okay. So Lorenzo-3 does not indicate
 9 in what office the source worked and I'm not
 10 recalling now where my belief that she worked in
 11 the business affairs unit came from, but I still
 12 believe that to be the case.
 13 **Q. It's not the case, but that's fine.**
 14 **You don't know where your belief came from. You**
 15 **don't know where your belief came from, but I'm**
 16 **actually going to represent to you that that's**
 17 **not the case.**
 18 A. Okay.
 19 **Q. Does that change your view in any**
 20 **way?**
 21 MR. FOX: Objection.
 22 A. To the extent that the layoffs were
 23 concentrated in the business affairs unit, which
 24 was my understanding, that would be more
 25 concerning than layoffs elsewhere within America

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1 B. Black
2 Online.
3 **Q. And in order for your -- the second**
4 **hypothetical to be true, that the source of AOL**
5 **was referring to layoffs that actually were**
6 **announced publicly by the Washington -- I'm**
7 **sorry, The Wall Street Journal on August 13th,**
8 **that would mean that this source would need to**
9 **have non-public information about 1,000 people**
10 **being laid off at various -- at AOL.**
11 **Would it matter to you whether that**
12 **source was in a position to know such**
13 **information?**
14 MR. FOX: Objection.
15 A. It's certainly my -- I don't have
16 that information.
17 **Q. But if I represent to you that the**
18 **source of AOL was a woman named Sarah Bernard**
19 **who was a 25-year-old, very junior employee at**
20 **AOL, would that affect your view as to whether**
21 **or not it was more likely that the layoffs she**
22 **was referring to were the ones that were**
23 **announced on July 11th in the Washington Post**
24 **article or the layoffs that were announced**
25 **August 13th in The Wall Street Journal article?**

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1 B. Black
2 weeks later.
3 **Q. Okay. Take a look at the email at**
4 **the bottom of Lorenzo-3.**
5 **It says, "I have source at AOL and**
6 **apparently the company had some layoffs today."**
7 A. Okay.
8 **Q. Does that change your view as to**
9 **whether the source at AOL is likely talking**
10 **about layoffs that were announced on August 13th**
11 **or more likely talking about layoffs that were**
12 **announced in the Washington Post article of July**
13 **11th?**
14 A. I would agree that this would move
15 you in the direction of that the email is
16 referring to layoffs that took place on July
17 10th.
18 **Q. Having been through this back and**
19 **forth, what in your mind still makes you think**
20 **there's any possibility that the layoffs**
21 **referred to in the string of emails are actually**
22 **the layoffs that occurred on -- that were**
23 **announced on August 13th?**
24 A. I suppose that sitting in a
25 deposition and you're giving me pieces of

1 **B. Black**
2 MR. FOX: Objection.
3 A. What I find myself thinking about is
4 that it's quite likely in July, from Lorenzo-3
5 and Lorenzo-6, that Ms. Bernard did not have a
6 huge amount of specific detail about numbers and
7 locations and so on. She had general
8 information and, you know, either didn't have
9 more specific information or didn't disclose it
10 to Mr. Lorenzo.
11 I wouldn't expect a junior person to
12 have highly specific information but would think
13 it at least plausible that she might have
14 general information.
15 **Q. About what?**
16 A. About impending future layoffs which
17 might not have been at that time definite as to
18 number of people and location.
19 **Q. Non-public information, she might**
20 **have non-public information that would stay**
21 **non-public for a month.**
22 MR. FOX: Objection.
23 A. That doesn't seem to me to be
24 implausible if the layoffs did not occur
25 immediately, but instead mostly occurred some

1 B. Black
2 evidence that are consistent with one view and
3 it's possible that there are other pieces of
4 evidence that are consistent with a different
5 view, so I'm reluctant to form a strong opinion.
6 Again, I didn't view it as my job to
7 form an opinion on what this information
8 referred to.
9 I've viewed it as my job to say if it
10 referred to the layoffs that were announced in
11 August, that would be important information.
12 **Q. I'm not asking you if there's other**
13 **things out there that could make one believe if**
14 **they existed, that the layoffs were the August**
15 **13th.**
16 **I'm asking you based on everything**
17 **you've got in front of you and everything you've**
18 **seen, what makes you still think that it is**
19 **plausible that the layoffs that are referred to**
20 **in Lorenzo-3 and 6 are the layoffs that were**
21 **announced by the Wall Street Journal on August**
22 **13th?**
23 A. Medium severity doesn't sound to me
24 like 30 people in a company as big as AOL.
25 **Q. Anything else?**

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1 **B. Black**
2 A. In terms of what's been put before me
3 in the last 30 minutes, that's I think the
4 principal thing I would look to.
5 **Q. Now turning to the second part of the**
6 **email, Lorenzo-6, there is a reference to an**
7 **investigation?**
8 MR. FOX: Lorenzo-6?
9 MR. GESSER: I'm sorry. I apologize.
10 It's Black-16.
11 A. Yes.
12 MR. FOX: Black-16. Got it.
13 BY MR. GESSER:
14 **Q. "In addition, I wasn't aware that AOL**
15 **was under investigation and has suspended some**
16 **employees for inappropriate accounting**
17 **activities. Some deals booked inappropriately,**
18 **inflated revenue. Also some employees have been**
19 **accused of trading irregularities; namely**
20 **shorting some partner stocks."**
21 A. I see that.
22 **Q. You say on page 7 of your report at**
23 **the top, "Also in July 2001, CSFB became aware**
24 **through the same source of an internal**
25 **investigation into accounting irregularity**

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1 **B. Black**
2 **assumption that -- without any, forming any of**
3 **your own view as to whether that assumption was**
4 **valid or not?**
5 A. I did not try to form my own view
6 whether that assumption was valid.
7 **Q. Whether you tried or not, did you?**
8 A. I did not form the opinion that the
9 assumption was unreasonable or I wouldn't have
10 said anything about it in the report.
11 **Q. Did you form the opinion that the**
12 **view was reasonable?**
13 A. I really have very little information
14 about what internal investigations were in fact
15 ongoing at AOL during this time period other
16 than Purchase Pro.
17 **Q. But with respect to the Purchase Pro**
18 **investigation, do you have any view as to what**
19 **was already publicly known and whether what was**
20 **already publicly known would encompass what was**
21 **contained in the email that is Black-16?**
22 MR. FOX: Objection.
23 A. I do not have a view.
24 **Q. I promised if there was time that we**
25 **would get back to the Time Warner numbers for**

1 **B. Black**
2 **within the business affairs unit. Assuming that**
3 **this information exceeded what was publicly**
4 **known concerning AOL's dealings with Purchase**
5 **Pro, this knowledge could be important to**
6 **investors."**
7 **Did you do any analysis on your own**
8 **to determine whether or not the information that**
9 **was contained in this email exceeded what was**
10 **publicly known concerning AOL's dealings with**
11 **Purchase Pro?**
12 A. No.
13 MR. FOX: Objection.
14 BY MR. GESSER:
15 **Q. So you have no view as to whether or**
16 **not the information contained in this email**
17 **exceeds what was known about AOL's dealings with**
18 **Purchase Pro at this time?**
19 A. I was treating that as an assumption
20 rather than a matter on which I had the ability
21 to factually investigate.
22 **Q. But did you in fact look at documents**
23 **that led you to believe one way or the other**
24 **whether that was an assumption that was valid or**
25 **plausible, or did you just treat that as an**

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1 **B. Black**
2 **the first quarter of 2001 and it looks like we**
3 **do have time.**
4 MR. GESSER: So I'm going to mark
5 as -- what do we have here?
6 So I think we already have marked the
7 April 10th, 2001 report as Black -- someone
8 help me.
9 THE WITNESS: Fifteen.
10 MR. GESSER: Fifteen, excellent.
11 BY MR. GESSER:
12 **Q. So let's take a look at page 30.**
13 **(Document review.)**
14 **Q. Do you have that calculator that I**
15 **gave you before?**
16 A. I do.
17 **Q. Okay. So if you were to take these**
18 **numbers that appear on page 30 in the April 10th**
19 **report for cable, filmed entertainment,**
20 **networks, music and publishing, would you agree**
21 **that those numbers would represent the Time**
22 **Warner 2001 combined revenue estimate?**
23 A. Yes.
24 **Q. So I'm going to ask you to add those**
25 **up.**

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1 **B. Black**
2 A. Okay. For which period?
3 **Q. 3/31/01 estimate, the first quarter**
4 **estimate.**
5 A. Okay.
6 (Witness complies.)
7 A. Okay.
8 **Q. What's the total number that you get?**
9 A. I get 7154 in millions of dollars.
10 **Q. And just so we're...**
11 **Just so we're clear, back on page 11**
12 **of your report you indicated that Kiggen**
13 **increased the Time Warner revenue numbers by**
14 **\$800 million and then you indicate, "It's hard**
15 **to see this change in Time Warner revenue was**
16 **either honest or reasonable."**
17 A. That statement is about the full year
18 numbers. It wasn't about the first quarter
19 numbers.
20 So I don't have a recollection as to
21 whether there were changes from Laura Martin's
22 view to, in January, to here in April in the
23 first quarter numbers or whether these refer to
24 later quarters.
25 **Q. But you're talking in your report**

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1 **B. Black**
2 **today.**
3 A. I don't know today.
4 **Q. Okay. All right. I'm nonetheless**
5 **going to go through this exercise because I**
6 **think it's worthwhile to do.**
7 MR. GESSER: So if you now going to
8 mark this as Black 17.
9 (Defendants' Exhibit Black 17,
10 Excerpts from 10-Q dated 3/31/01, marked
11 for identification, as of this date.)
12 BY MR. GESSER:
13 **Q. So if you turn --**
14 MR. FOX: This is the entire 10-Q?
15 MR. GESSER: I believe it is not the
16 entire Q, is it?
17 MR. FOX: I don't know. I'm just
18 asking. It looks like it just ends on
19 page 7.
20 MR. GESSER: I don't think it's the
21 entire Q.
22 MR. FOX: Do you have the entire Q?
23 MR. GESSER: No.
24 BY MR. GESSER:
25 **Q. So turning to page -- it's hard to**

1 **B. Black**
2 **about the April 10th -- I mean if you look at**
3 **the bottom of page 10, this is all within the**
4 **section of the April 10th, 2001 CSFB report; is**
5 **that right?**
6 A. Yes.
7 **Q. Okay. So are you suggesting that**
8 **it's possible that Kiggen raised the Time Warner**
9 **numbers, revenue numbers, but left the first**
10 **quarter numbers alone?**
11 MR. FOX: Objection.
12 A. My recollection is that the overall
13 full year Time Warner revenue numbers went up at
14 the same time that the AOL full year revenue
15 numbers went down, and I don't have that
16 recollection tied to the first quarter of 2001.
17 **Q. But presumably some of that would be**
18 **in first quarter or do you think it's possible**
19 **that all of the increase in revenue occurred in**
20 **other quarters other than the first quarter?**
21 A. It's certainly possible it was in the
22 other quarters.
23 **Q. Why would that be?**
24 A. It's certainly possible.
25 **Q. You just don't know sitting here**

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1 **B. Black**
2 **know what page it is because my pages are cut**
3 **off. It's page 5 maybe?**
4 **Do you see revenue numbers?**
5 A. So let me make sure I'm looking at
6 apples to apples.
7 Okay, yes. So I see revenue numbers,
8 business segment results for AOL Time Warner for
9 the first quarter of 2001 and they include 3
10 month revenue and 3 month EBITDA.
11 **Q. Okay. So if you were to add up the**
12 **numbers for cable, film, networks, music,**
13 **publishing, would that give you the actual first**
14 **quarter 2001 Time Warner numbers?**
15 MR. FOX: Objection.
16 A. I'm not sure it's an apples to apples
17 comparison.
18 **Q. Why not?**
19 A. Because the CSFB report has a
20 relatively small -- so I guess the difference is
21 that there's an intersegment elimination and I
22 really want to trace through, since there is no
23 comparable intersegment elimination line in the
24 CSFB report, whether these numbers are truly
25 comparable.

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1 B. Black
2 **Q. But the intersegment elimination**
3 **number would actually make the AOL numbers**
4 **higher, right?**
5 A. If one imagined taking the
6 intersegment elimination and spreading it
7 through the networks, then the numbers in the
8 10-Q for the networks would go down. They would
9 have to go down because the total is still the
10 same total. So if I take the minus 428 and move
11 it up to zero, I have to move something else
12 down by 428, spread across the various
13 divisions.
14 **Q. And so you think that --**
15 A. I'm -- so I'm just not sure that I'm
16 doing a head-to-head comparison here.
17 **Q. And you've never done this**
18 **calculation before?**
19 **I thought you said you looked at this**
20 **before.**
21 A. I believe that I did a full year
22 analysis and I didn't look specifically at the
23 first quarter, and so I'm reluctant to form a
24 view on the fly as to whether these numbers
25 match up directly or not.

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1 **B. Black**
2 A. I'd have to go back and look at
3 Black-17.
4 So if I, if I do that, that's the
5 same -- I see the same 2125 number for AOL in
6 the 10-Q as I see in my Table 3.
7 **Q. So that whatever intercompany**
8 **elimination issue or intersegment elimination**
9 **issue existed, it didn't prevent you from**
10 **pulling the 2125 number into your table; is that**
11 **right?**
12 A. That's correct. My Table 3 would be
13 before intersegment elimination.
14 **Q. Okay. So let's just do the numbers,**
15 **as I indicated, by adding up -- you add up**
16 **cable, film, network, music and publishing in**
17 **the page we're looking at in Black-17 and just**
18 **let's compare it to the number we got when we**
19 **added up cable, film, networks, music and**
20 **publishing in the April 10th CSFB report.**
21 A. I'm happy to do that with the caveat
22 that again, I don't know how CSFB handled
23 intersegment elimination. We verified how I
24 handled it, but we don't know how they handled
25 it.

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1 B. Black
2 **Q. Okay. So you're not sure whether**
3 **these numbers here that are listed under 2001**
4 **historical are numbers that are useful because**
5 **of the intersegment elimination; is that right?**
6 MR. FOX: Objection.
7 A. Yes. I'm not sure how to deal with
8 the fact that intersegment elimination exists in
9 one document and not the other, and it may well
10 be that with further work, I could figure that
11 out, but I'm reluctant to do it on the fly.
12 **Q. Okay. If you look at page 12 of your**
13 **report, Table 3.**
14 A. Okay.
15 **Q. You have a first quarter 2001 revenue**
16 **number for AOL's actual?**
17 A. I have a number for what I call AOL
18 actual, which is what we've been calling in this
19 deposition America Online, yes.
20 **Q. Okay. And that's 2125; is that**
21 **right?**
22 A. Yes.
23 **Q. Which is the same number that appears**
24 **on the page that we were looking for -- looking**
25 **at previously in Black-17; is that right?**

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1 B. Black
2 **Q. Okay.**
3 A. Okay. So I get...
4 (Computing.)
5 A. I get 7683 as a total I believe.
6 **Q. I'm sorry. What did it come out to?**
7 A. 7683.
8 **Q. Okay. Why don't you do it again.**
9 A. Okay.
10 (Computing.)
11 A. I get 7383.
12 **Q. That's more like it.**
13 A. Okay. And so before I had 71 --
14 **Q. Five four.**
15 A. -- 54, and if I were to observe
16 division by division, it looks like there was a
17 large, putting aside the intersegment issue, it
18 looks like there was a large upward variation in
19 the actual results for film data entertainment.
20 So they probably had a hit film in the first
21 quarter but that would be knowable information.
22 I just don't know it.
23 The other four segments as a whole
24 are roughly comparable.
25 **Q. Okay. So getting back to areas of**

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Page 295

1 **B. Black**
 2 **your expert report that you may no longer feel**
 3 **comfortable with, let's turn back to page 11.**
 4 **Are you still comfortable with the**
 5 **sentence at the beginning of the second**
 6 **paragraph, "It's hard to see how this change in**
 7 **Time Warner revenue was either honest or**
 8 **reasonable"?**
 9 MR. FOX: Objection.
 10 A. I really would want to go back and
 11 see where and how the increase in TW revenue
 12 came in and I -- you know, you have persuaded me
 13 for a different table that I was using restated
 14 numbers instead of original numbers and I should
 15 have been using the original numbers.
 16 On this one I think I would simply
 17 say I would need to do more work to know whether
 18 I would want to change this opinion.
 19 **Q. Okay. So this is now a tentative and**
 20 **subject to further inquiry or is this off the**
 21 **table but could come back on the table subject**
 22 **to further inquiry, or you're still comfortable**
 23 **with this but it's possible that further inquiry**
 24 **will make you no longer comfortable with it?**
 25 MR. FOX: Objection.

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1 **B. Black**
 2 **I'm just asking do you remember how you got**
 3 **these numbers?**
 4 A. Yes.
 5 **Q. Okay. Looking back on page 12,**
 6 **there's a, it's not quite a table but it's some**
 7 **numbers at the bottom of the page that are**
 8 **arranged.**
 9 **You have a 62 multiple for AOL?**
 10 A. Yes.
 11 **Q. Okay. Can you explain to me how you**
 12 **get that?**
 13 A. I believe that I took that from the
 14 Fidelity presentation.
 15 **Q. Is that number actually in the**
 16 **Fidelity presentation or do you derive it from**
 17 **the Fidelity presentation?**
 18 A. I don't recall.
 19 **Q. And the 18 multiple?**
 20 A. That was a...
 21 (Document review.)
 22 A. I'm now thinking that these multiples
 23 might have come out of the April 10th published
 24 report.
 25 **Q. And you have that somewhere, right?**

1 **B. Black**
 2 A. I'd say that further inquiry is
 3 appropriate and I don't see why it's worth
 4 speculating on whether I'm comfortable subject
 5 to further inquiry or I might become comfortable
 6 with further inquiry.
 7 **Q. Fair enough.**
 8 MR. GESSER: Let's take a five-minute
 9 break.
 10 THE VIDEOGRAPHER: Going off the
 11 record. The time is 5:53 p.m.
 12 (Recess is taken.)
 13 THE VIDEOGRAPHER: We're back on the
 14 record. The time is 6:00 p.m.
 15 This is the beginning of the tape
 16 labeled No. 6.
 17 BY MR. GESSER:
 18 **Q. We only have a few minutes left, but**
 19 **I have a couple of questions that I just wanted**
 20 **to clear up.**
 21 **One is on page 13 of your report,**
 22 **Table 4?**
 23 **Do you remember how you got the**
 24 **numbers that are in this table?**
 25 **I'm not asking you to tell me how,**

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1 **B. Black**
 2 A. I have that, yes.
 3 **Q. Okay. Why don't you take a look at**
 4 **it and see if that helps you figure out where**
 5 **these multiples are coming from.**
 6 A. So I'm now looking at the April 10th
 7 report and at Table 10 of that report, which is
 8 on page 35, and it has a 62 multiple for AOL and
 9 multiples for the different divisions of TW here
 10 by -- AOL is what it says on the page which
 11 we've been calling America Online.
 12 And I believe that I computed the
 13 blended 18 multiple for Time Warner as a sort of
 14 EBITDA weighted multiple of the multiples that
 15 are shown for the different divisions of AOL in
 16 this report.
 17 **Q. Okay. Table 10 is titled "AOL Time**
 18 **Warner Private Market Value Analysis"; is that**
 19 **right?**
 20 A. Yes.
 21 **Q. Do you know what that means?**
 22 A. I believe so, yes.
 23 **Q. So what is a private market value**
 24 **analysis?**
 25 A. I think this is an effort to estimate

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1 B. Black
2 what a buyer would pay in purchasing these
3 businesses on a whole company or I should say
4 whole segment basis.

5 **Q. Why is that multiple relevant to the**
6 **calculation you're doing in D of your report?**

7 A. This is certainly one common way of
8 arriving at a company valuation for a complex
9 multidivisional company is to try to value the
10 pieces separately and a multiple of EBITDA is a
11 common way to value businesses separately.
12 Common way to value businesses.

13 **Q. All businesses?**

14 A. In practice, one sees different
15 metrics commonly used for different businesses
16 and indeed one sees that to some extent in Table
17 10 where they use a dollars per homes past
18 metric for cable assets rather than an EBITDA
19 metric as their primary metric, but there are
20 certainly businesses for which a multiple EBITDA
21 is a useful and used metric.

22 **Q. Have you ever seen a private market**
23 **value analysis being done on a company as large**
24 **as AOL Time Warner or a business unit as large**
25 **as any of the business units that are listed in**

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1 B. Black
2 reason why it would be inappropriate to conduct
3 a private market value analysis as a way to
4 estimate the value of AOL as a whole.

5 **Q. You read Laura Martin's deposition**
6 **transcript.**

7 A. I did.

8 **Q. And do you recall her having any**
9 **concerns about using a private market value**
10 **analysis for AOL?**

11 A. I recall that there was some
12 discussion of that in the deposition.

13 **Q. Do you remember what her view was?**

14 A. Not specifically.

15 **Q. If you look at page 180 of her**
16 **deposition.**

17 (Document review.)

18 **Q. Starting at actually the bottom of**
19 **page 179 with the sentence, "I think..."**

20 Do you see that?

21 It says, "I think one of the reasons
22 Jamie and I decided ultimately not to use a
23 private market value analysis, even though I use
24 them in the rest of my businesses, is because it
25 was too big to buy."

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1 B. Black

2 **Table 10?**

3 MR. FOX: Objection.

4 Other than here?

5 BY MR. GESSER:

6 **Q. Other than here?**

7 A. There aren't that many companies that
8 were that large in market cap at the time or now
9 and I don't recall -- I do not affirmatively
10 recall having seen that analysis for one of the
11 small number of companies that would fall within
12 that category.

13 **Q. Have you ever -- do you know of any**
14 **reason why the private market value analysis**
15 **would not be particularly useful for a company**
16 **as large as AOL or any business units as large**
17 **as the AOL business units that are listed in**
18 **Table 10?**

19 MR. FOX: Objection.

20 A. Let me offer a complex answer.

21 First, it's not clear to me the
22 extent to which the multiples that appear in
23 this analysis are different than multiples that
24 one would use in a public market value analysis.

25 And second, no, I don't see any

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1 B. Black

2 A. Okay. I see that.

3 **Q. Do you remember that?**

4 A. Yes.

5 **Q. So you did remember that.**

6 A. I'm now recalling that that's what
7 she said. I didn't -- I remembered some
8 discussion of it.

9 I do not agree with her statement
10 here.

11 **Q. Why do you not agree with her**
12 **statement?**

13 A. One could perhaps say that the AOL
14 unit was too big to buy, but the other five
15 segments were not too big to buy and it seems
16 perfectly appropriate to value them using a
17 private market analysis.

18 **Q. So you disagree with Laura Martin's**
19 **view here?**

20 A. I disagree with Laura Martin's view
21 as it applies to everything except the America
22 Online segment.

23 **Q. Are you committing fraud?**

24 MR. FOX: Objection.

25 A. One would hope not.

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Page 303

1 B. Black
 2 **Q. Okay. So just because someone**
 3 **disagrees with Laura Martin doesn't mean they're**
 4 **committing fraud.**
 5 A. I do not recall offering that opinion
 6 in my report.
 7 **Q. That's not what I'm asking.**
 8 A. I would agree with --
 9 MR. FOX: Objection.
 10 A. I would agree with the statement that
 11 disagreeing with Laura Martin is not convincing
 12 evidence of committing fraud.
 13 **Q. Let's end on that.**
 14 MR. GESSER: Thank you.
 15 (Continued on next page to include
 16 jurat.)
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 B. Black
 2 THE VIDEOGRAPHER: We're now going
 3 off the record. The time is 6:10 p.m.
 4 This is the end of Tape labeled No.
 5 6 concluding this video deposition.
 6 (Time noted: 6:10 p.m.)
 7
 8
 9
 10

BERNARD BLACK
 11
 12
 13 Subscribed and sworn to before me
 14 this day of 2008.
 15
 16

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ERRATA SHEET FOR THE TRANSCRIPT OF:

CASE NAME: In Re Credit Suisse - AOL Securities

DATE: AUGUST 19, 2008

DEPONENT: BERNARD BLACK

Pg. Ln. Now Reads Should Read Reason

Pg.	Ln.	Now Reads	Should Read	Reason
7	—	—	—	—
8	—	—	—	—
9	—	—	—	—
10	—	—	—	—
11	—	—	—	—
12	—	—	—	—
13	—	—	—	—
14	—	—	—	—
15	—	—	—	—
16	—	—	—	—

BERNARD BLACK

SUBSCRIBED AND SWORN BEFORE ME

THIS ____ DAY OF ____ 2008.

(Notary Public)

MY COMMISSION EXPIRES: _____

C E R T I F I C A T E

STATE OF NEW YORK)

) ss.:

COUNTY OF QUEENS)

I, ANNETTE ARLEQUIN, a Notary Public within and for the State of New York, do hereby certify that the within is a true and accurate transcript of the proceedings held on August 19, 2008.

That I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of September, 2008.

ANNETTE ARLEQUIN, CCR, RPR

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